

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

---

RE/MAX International, Inc.,

Plaintiff,

v.

TREND SETTER REALTY, LLC,  
a Texas limited liability company;

PAVNOUTY ABRAHAM, an individual;

and

DEBORAH N. MILLER, an individual

Defendants.

---

CIVIL ACTION NO. 4:07-CV-02426

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT I

\*\*\*\*\*

\*\*\*\*\*

269681b8-a6c3-4873-a158-9c52a0f99ac9

Page 2

Street, Suite 1800, Houston, Texas 77002, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Page 4

## INDEX

## PAGE

Appearances.....	3
Stipulations.....	5
DEBORAH MILLER	
Examination By Mr. Posthumus.....	6
Examination By Mr. Patel.....	125
Signature and Changes.....	127
Reporter's Certificate.....	129

## EXHIBITS

NO.	DESCRIPTION	PAGE
23	Copy of RE/MAX Yard Sign.....	37
24	Letter to Ad-Mar from D. Miller with Trend Setter Realty Dated 4-26-05.....	60
25	Notice of Deposition of Deborah Miller.....	108
26	Copy of Two Business Cards for Deborah Miller of Trend Setter Realty.....	121

Page 3

## APPEARANCES

FOR THE PLAINTIFF and COUNTERDEFENDANT, RE/MAX INTERNATIONAL, INC.:

Mr. John R. Posthumus  
GREENBERG TRAURIG, L.L.P.  
The Tabor Center  
1200 17th Street  
Suite 2400  
Denver, Colorado 80202  
Ph: (303) 572-6500 Fax: (303) 572-6540  
Email: posthumusj@gtlaw.com

FOR THE DEFENDANT and COUNTERPLAINTIFF, TREND SETTER REALTY, LLC, A TEXAS LIMITED LIABILITY COMPANY; PAVNOUTY ABRAHAM, AN INDIVIDUAL; AND DEBORAH N. MILLER, AN INDIVIDUAL:

Mr. Mayur Patel  
HESTER & PATEL, P.C.  
14511 Falling Creek Drive  
Suite 403  
Houston, Texas 77014  
Ph: (281) 586-7999 Fax: (281) 586-7997  
Email: mpatel@hesterpatel.com

## ALSO PRESENT:

Mr. Adam Lindquist Scoville, Senior Counsel  
RE/MAX International, Inc.

Mr. Abraham Pavnouty

Page 5

## STIPULATIONS

The parties in the above entitled and numbered cause agree that the Deposition shall be taken pursuant to the Federal Rules of Civil Procedure.

The parties agree that all objections as to the form of the question and the responsiveness of the answer are to be made at the time of the taking of said deposition; but that all other objections are reserved and may be made at the time this deposition, or any part thereof, is offered on the trial.

The parties further agree when said deposition has been transcribed, it will be forwarded to the witness or attorney for the witness for examination, notarization and signature and is to be returned to the reporter. If the deposition is not returned to the reporter, an unsigned copy can be used at the time of trial with the same force and effect as though the original had been read and signed.

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p>1 DEBORAH MILLER, 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 BY MR. POSTHUMUS: 5 Q. Good afternoon. My name is John Posthumus. I 6 represent RE/MAX International in connection with a -- a 7 dispute involving Trend Setter Realty, Pavnouty Abraham 8 and -- and yourself, Deborah Miller. If you could state 9 your name for the record and spell your last name. 10 A. Deborah Miller, M-I-L-L-E-R. 11 Q. And, Ms. Miller, are you a resident in the 12 Houston area? 13 A. Missouri City, Texas. 14 Q. Okay. Is that within 100 miles of Houston? 15 A. Oh, yeah. Uh-huh. 16 Q. Just, please, state your address for the 17 record. 18 A. 4910 McKeever Lane, Missouri City, Texas, 19 77459. 20 MR. PATEL: And let him finish the 21 question before you answer. 22 Q. (By Mr. Posthumus) Have you been deposed 23 before? 24 A. A long time ago. 25 Q. Okay. Let me go through a couple of just</p>	<p style="text-align: right;">Page 8</p> <p>1 You're entitled to clear questions, and 2 occasionally I will kind of ask questions that may not 3 make any sense or certainly, you know, may not make any 4 sense to you. So if you don't understand the question, 5 please ask me or please tell me and I'll try to rephrase 6 it in a way that is understandable to you. 7 If you don't say anything, I'll presume that 8 you understood my question and you're responding to my 9 question. Is that okay with you? 10 A. Okay. 11 Q. Feel free to let us know if you ever want to 12 take a break. This is not a marathon. You know, we're 13 going to probably try to take breaks every hour, hour 14 and a half, just to keep the pace going. But if -- if 15 for any reason you need to take a break, please let us 16 know and we'll go off the record. 17 A. Okay. 18 Q. If you need to confer with counsel for any 19 reason, please let me know and we'll take time to do 20 that as well. 21 How long -- are you presently employed by 22 Trend Setter Realty? 23 A. Yes. 24 Q. And for how long have you been employed? 25 A. Since March of 2005.</p>
<p style="text-align: right;">Page 7</p> <p>1 guidelines that if we follow will make the job of the 2 court reporter a lot easier. 3 A. Okay. 4 Q. The court reporter is here to record in a 5 stenographic fashion everything that's said in the room, 6 and so in order for her to do that successfully, it's 7 very important that we not talk over each other or 8 interrupt each other. So if you could allow sufficient 9 time for me to complete my question and I'll allow 10 sufficient time for you to complete your answer, it will 11 make it a lot easier for the court reporter to record 12 the testimony today. Do you understand that? 13 A. Uh-huh. 14 Q. Okay. And the other thing that I need to have 15 you do is, because the court reporter is recording what 16 is said, that we have to have a verbal response or some 17 type of verbal indication of what is being said in the 18 room. So say "Yes" or "No" or provide an answer, but 19 avoid nods of the head or uh-huh's or those types of 20 things -- 21 A. Okay. 22 Q. -- so that that can be accurately recorded. 23 Do you -- 24 A. Yes. 25 Q. Do you understand that? Okay.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. And since March of 2005 have you been 2 continuously employed by Trend Setter Realty? 3 A. Yes, I have. 4 Q. And what position do you currently maintain 5 with Trend Setter? 6 A. Sponsoring broker. 7 Q. And throughout the time that you've been with 8 Trend Setter, has your position been sponsoring broker? 9 A. Yes. 10 Q. Have you held any other positions? 11 A. Not that I recall. I'm called Jack of all 12 trades sometimes, but... 13 Q. What are your responsibilities as sponsoring 14 broker? 15 A. Besides the sponsorship through TREC, I sign 16 up agents as they come in. I review contracts. I walk 17 agents through contracts, training, when it's necessary, 18 pretty much to answer questions that agents have. 19 I have a few of my own listings, very few, and 20 I have a few of our agents that are owner agents that I 21 have their listings. 22 Q. When you say, "owner agents," what do you mean 23 by that? 24 A. In order to be covered by E &amp; O insurance, you 25 must have an arm's length transaction so that someone</p>

Page 14

1 A. Uh-huh.  
 2 Q. And how long were you there?  
 3 A. Right at a year. Actually, they hold my  
 4 license from 1990, once I got my license, but I didn't  
 5 practice until '91, so actually they held it for --  
 6 Q. A couple of years?  
 7 A. Uh-huh.  
 8 Q. And then after -- and that would have been  
 9 here in the Houston area? ERA Keenan?  
 10 A. Sugar Land, which is close enough to...  
 11 Q. I'm not -- you'll have to forgive me. I'm not  
 12 that familiar with the Houston area. How far out is  
 13 Sugar Land in terms of miles from, let's say, downtown  
 14 Houston?  
 15 A. Gosh. 25-minute ride, maybe, 30, 30-minute  
 16 drive maybe.  
 17 Q. Okay.  
 18 MR. PATEL: 20 miles, I'd say, 15 or 20  
 19 miles.  
 20 Q. (By Mr. Posthumus) So you would consider  
 21 Sugar Land a suburb of Houston?  
 22 A. Uh-huh.  
 23 Q. Would that be appropriate?  
 24 A. Yes, sir.  
 25 Q. All right. And after -- you indicated that

Page 15

1 you left Keenan at some point in 1991?  
 2 A. Uh-huh.  
 3 Q. Where did you go after that?  
 4 A. RE/MAX Heritage.  
 5 Q. And where was that RE/MAX Heritage located?  
 6 A. Sugar Land.  
 7 Q. And do you know who the broker of record was  
 8 there at that time? Do you recall?  
 9 A. You know, I'll just -- I'll just say that you  
 10 guys were so busy swapping around owners and that --  
 11 that almost closed down and it went through ownership  
 12 change, broker change. I can't tell you who it  
 13 finally -- I mean, it was a mess at that particular  
 14 location. So I am not sure who the broker was. I'm  
 15 sorry. It changed several times during that  
 16 transitional time period.  
 17 Q. Okay. How long -- how long were you there?  
 18 A. About two years.  
 19 Q. So from 1992 to about sometime in 1994?  
 20 A. Uh-huh.  
 21 Q. And then what happened after that?  
 22 A. I was in the process of building a house. I  
 23 took a -- I moved my license to Equity Group for about  
 24 six months because I didn't really want to practice very  
 25 much while I was building. Then I moved straight over

Page 16

1 to Keller Williams.  
 2 Q. So Keller Williams may be in about 1995 or  
 3 thereabouts?  
 4 A. '95, yeah, '95, '96, somewhere around there.  
 5 I'm not sure of the years. I'd have to go back and  
 6 look.  
 7 Q. Okay. Equity Group, what -- who are they?  
 8 A. It's no more.  
 9 Q. Okay.  
 10 A. It was a one-man shop.  
 11 Q. Just a one-man real estate --  
 12 A. Uh-huh.  
 13 Q. -- brokerage?  
 14 A. Yeah, just needed somebody to hold my license  
 15 while I was building a house and didn't want to mess  
 16 with anything.  
 17 Q. Sure. And then Keller Williams where?  
 18 A. Sugar Land, also.  
 19 Q. Sugar Land, also? Okay.  
 20 A. And it was Keller Williams, Sugar Land, was  
 21 the name of it, so...  
 22 Q. How long were you at Keller Williams?  
 23 A. I was at Keller Williams from '96 through '97  
 24 because I think -- yeah, I think '95 -- '95 and --  
 25 '95 -- let's see, '94 or '95 because I wasn't with

Page 17

1 Equity Group very long, '94 or '95. '96 and '97 was  
 2 Keller Williams.  
 3 Q. And then what did you do after Keller  
 4 Williams?  
 5 A. Realty Executives for -- through '99.  
 6 Q. So '97 to '99?  
 7 A. Uh-huh.  
 8 Q. Approximately two years?  
 9 A. Uh-huh. Every one of them were close to two  
 10 years, two to two and a half years, except for Equity  
 11 Group.  
 12 Q. And then so Realty Executives, was that in  
 13 Sugar Land?  
 14 A. Uh-huh.  
 15 Q. And then what happened when you left Realty  
 16 Executives in '99?  
 17 A. I went to RE/MAX Fine Properties.  
 18 Q. And how long were you there?  
 19 A. A couple of years.  
 20 Q. So '99 to 2001?  
 21 A. Whenever -- whenever I signed on with  
 22 Realty -- excuse me -- RE/MAX Elite, whenever I signed  
 23 on there. I don't remember. You can back into that.  
 24 Q. Okay. That's when you --  
 25 A. I went from RE/MAX Fine Properties to RE/MAX

5 (Pages 14 to 17)

Page 18

1 Elite.  
 2 Q. That's your next stop?  
 3 A. Uh-huh.  
 4 Q. That would have been --  
 5 A. I know -- I know where I was. I apologize. I  
 6 don't know my years without going back and trying to  
 7 figure them out.  
 8 Q. Oh, no. It's -- yeah. No, I understand.  
 9 So from about '01 to about '03 or thereabouts?  
 10 A. Uh-huh.  
 11 Q. I'm sorry. You were at RE/MAX Fine Properties  
 12 until about '03?  
 13 A. To '01.  
 14 Q. And then what happened after RE/MAX? You went  
 15 to Elite?  
 16 A. Elite. Well, wait a minute. Let's see.  
 17 Q. I think you started at Elite, according to the  
 18 contract, maybe in '03?  
 19 A. Okay. Then it was 2000 that I went to RE/MAX  
 20 Fine Properties, not '99, to '03. There you go.  
 21 Because if I went to Elite in '03, then that would have  
 22 been right.  
 23 Q. Okay.  
 24 A. Like I said, I have to back into the years.  
 25 Q. Right. And then you were at RE/MAX Elite

Page 19

1 until you joined Trend Setter in '05. Would that be  
 2 accurate?  
 3 A. Yeah.  
 4 Q. In March of '05?  
 5 A. Yeah, I was there.  
 6 Q. But that's where your license was?  
 7 A. Uh-huh.  
 8 Q. Right?  
 9 A. Yes, sir.  
 10 Q. And RE/MAX Elite, where is that located?  
 11 A. It's actually Stafford, which is next to Sugar  
 12 Land and about two miles closer to Houston.  
 13 Q. Okay. And RE/MAX Fine Properties, where was  
 14 that located?  
 15 A. Sugar Land.  
 16 Q. Okay. And so let's -- at ERA Keenan you acted  
 17 as an -- as a sales associate?  
 18 A. Yes, I did.  
 19 Q. And was that on an independent contractor  
 20 basis?  
 21 A. Yes.  
 22 Q. And did you hold any other positions with ERA  
 23 Keenan?  
 24 A. No, sir.  
 25 Q. The position you held with RE/MAX Heritage in

Page 20

1 '92, was that as a sales associate position?  
 2 A. Yes, sir.  
 3 Q. And did you hold any other position?  
 4 A. No, sir.  
 5 Q. And that was on an independent contractor  
 6 basis?  
 7 A. Yes, sir.  
 8 Q. With Keller Williams, a sales associate again?  
 9 A. Again.  
 10 Q. And on an independent contractor basis?  
 11 A. Yes, sir.  
 12 Q. I guess the same two questions for Realty  
 13 Executives. A sales associate position?  
 14 A. Yes.  
 15 Q. And an independent contractor basis?  
 16 A. Yes.  
 17 Q. And then for RE/MAX Fine Properties, it was a  
 18 sales associate position?  
 19 A. Correct.  
 20 Q. And an independent contractor basis?  
 21 A. Uh-huh.  
 22 Q. Okay. Now, there came a time at some point  
 23 where you obtained your broker license; is that correct?  
 24 A. Yes, I got it. I got it the -- when I joined  
 25 RE/MAX Elite.

Page 21

1 Q. So about 2003?  
 2 A. Uh-huh. Yes, sir.  
 3 Q. And was there a -- a particular reason that  
 4 you obtained your broker license at that point?  
 5 A. Not really. I just decided I would like to  
 6 have it, just in case I ever wanted to retire and take  
 7 my license home and...  
 8 Q. I'm not --  
 9 A. They were supposed to also increase the  
 10 requirements the following year and I thought I might as  
 11 well go ahead and get it before they raised all the  
 12 additional education and all the other stuff they were  
 13 talking about doing.  
 14 Q. Okay. This is part of obtaining the license?  
 15 A. Correct.  
 16 Q. The requirements for obtaining the license?  
 17 A. Correct.  
 18 Q. Okay. So what -- if you could just briefly  
 19 describe for the record what is involved with obtaining  
 20 your broker license?  
 21 A. I had to take a, I think, two more courses and  
 22 pass the broker's exam. I had enough courses up until  
 23 then. That's all I was required.  
 24 Q. So what do you mean by "courses"?  
 25 A. Two more courses, two more mandatory courses

6 (Pages 18 to 21)

Page 38

1 appeared there; is that correct?  
 2 A. Yes.  
 3 Q. And -- and then your name would have appeared  
 4 in the -- in the white middle portion --  
 5 A. Yes.  
 6 Q. -- in place of John D. Sullivan?  
 7 A. Yes.  
 8 Q. Okay. When did you -- when did you first meet  
 9 Mr. Abraham?  
 10 A. Probably, approximately, the mid '90s, '92 or  
 11 '93, maybe '94.  
 12 Q. And do you recall the circumstances in which  
 13 you met him?  
 14 A. I got a call to show a property for his sister  
 15 and he was with her.  
 16 Q. Okay. And is it accurate to say that after  
 17 you met him, you developed a friendship with him?  
 18 A. Yes.  
 19 Q. Okay. Just if you could, for the record and  
 20 for the jury, describe just generally how you became  
 21 friends after that.  
 22 A. After helping that -- him on that purchase, I  
 23 helped one of his other sisters on a purchase and listed  
 24 a couple of foreclosures that he had purchased, off and  
 25 on over the years, here and there.

Page 39

1 Q. Okay. So he started using you as a -- as a  
 2 seller's representative on some of the real estate  
 3 transactions that he was involved in?  
 4 A. A few here and there. Uh-huh.  
 5 Q. Do you recall -- you mentioned '92, '93 and  
 6 '94. Do you recall which real estate brokerage firm you  
 7 were with when you met him?  
 8 A. I'm thinking Keller Williams, so it probably  
 9 was '94. Wasn't Keller Williams '94?  
 10 Q. Yeah, '95, '96.  
 11 A. Okay.  
 12 Q. '97?  
 13 A. It would have been -- it would have been right  
 14 at the end of '94, maybe going into it.  
 15 Q. Okay.  
 16 A. But I think I was at Keller Williams.  
 17 Q. You were with Keller Williams at that point?  
 18 A. Uh-huh.  
 19 Q. Okay. And so do you recall -- do you have any  
 20 knowledge about Mr. Abraham's business called Realty,  
 21 Etc.?  
 22 A. No.  
 23 Q. Didn't have any -- don't have any knowledge of  
 24 that?  
 25 A. I had no connection to that.

Page 40

1 Q. Okay.  
 2 A. No knowledge. I really didn't know about it  
 3 until after it was long closed down.  
 4 Q. Okay. So you don't -- you haven't -- you  
 5 weren't involved in any properties that Realty, Etc. was  
 6 involved in --  
 7 A. Huh-uh.  
 8 Q. -- or trying to sell or --  
 9 A. No.  
 10 Q. -- purchase or anything along those lines?  
 11 A. No, sir.  
 12 Q. Okay. Did you at any time, up to the time  
 13 period in which, let's say, February of 2005 when you  
 14 joined Trend Setter, did you -- were you involved with  
 15 Mr. Abraham in any -- in connection with any real estate  
 16 transactions, that you can recall?  
 17 A. I'm confused.  
 18 Q. Okay.  
 19 A. I don't understand the question.  
 20 Q. Yeah. And I think I understand the confusion.  
 21 Let's break it down. In terms of -- after you met in  
 22 '94/'95, you talked about -- you called to show -- you  
 23 know, they called you to show property to his sister,  
 24 then you did some other transactions involving the  
 25 family, and then it sounds like you did some

Page 41

1 transactions involving Mr. Abraham. I'm talking  
 2 specifically now about the transactions involving  
 3 Mr. Abraham. Do you recall any of those transactions  
 4 more specifically? I mean, were there like two of them?  
 5 Five of them? Ten of them?  
 6 A. I can't recall the exact number.  
 7 Q. Okay. What -- what's your best recollection?  
 8 A. Are you talking about listings --  
 9 Q. Yes.  
 10 A. -- just listings?  
 11 I think we've had a few -- we had a few -- he  
 12 had a few foreclosures that I listed in '99, 2000, I  
 13 guess, it was. Maybe it was 2000.  
 14 Q. About 2000?  
 15 A. In the year 2000.  
 16 Q. Okay. Okay. So in the year 2000 you had --  
 17 A. Four or five foreclosures that he had picked  
 18 up that, I think, all in the same neighborhood.  
 19 Q. And you were the listing agent for those?  
 20 A. That's correct.  
 21 Q. So would you have been at RE/MAX Fine  
 22 Properties at that point?  
 23 A. Yes, I would have.  
 24 Q. So you would have used the -- your sign --  
 25 your RE/MAX sign, the RE/MAX sign with your name on it

11 (Pages 38 to 41)

Page 42

1 in front of these properties --  
 2 A. Yes.  
 3 Q. -- that you were selling on Mr. Abraham's  
 4 benefit? Is that a "Yes"?  
 5 A. Yes.  
 6 Q. What about after these four or five in 2000,  
 7 any other ones up until February of 2005?  
 8 A. I don't -- I don't recall. I don't think so.  
 9 Q. Now, do you recall talking to -- or having any  
 10 communications with Mr. Abraham's -- with regard to the  
 11 Trend Setter -- starting the Trend Setter business?  
 12 A. Well, that's a bold question. Now, how do  
 13 you -- where do you -- at what point, I mean, are you  
 14 talking about?  
 15 Q. Let's just start -- we can start with the  
 16 first conversation that you recall. I'm just asking if  
 17 you recall those conversations or communications.  
 18 A. At some point, he's telling me he wants to  
 19 open up an office and he's thinking about starting one.  
 20 In fact, I think he was visiting with my husband at the  
 21 time and trying to come up with a name and then -- they  
 22 talked, the next thing I know, he said, "Would you be  
 23 interested in being the broker?" That was a few months  
 24 before.  
 25 Q. So end of 2004, early 2005 --

Page 43

1 A. Uh-huh.  
 2 Q. -- somewhere in that time frame?  
 3 A. Uh-huh.  
 4 Q. And so you've mentioned that your husband  
 5 talked to -- about the concept. What -- what is your  
 6 understanding of his involvement in that?  
 7 A. Oh, I think they were talking and Abraham said  
 8 something like, you know, "If I started" -- "I start" --  
 9 something like this. He said, "I really want to do  
 10 something" -- "a different trend, a totally different  
 11 trend."  
 12 And my husband says, "Well, why don't you just  
 13 call it Trend Setters, setting a new trend in real  
 14 estate?" And we went from there.  
 15 Q. Okay.  
 16 A. We blame him.  
 17 Q. Is your husband involved in the real estate  
 18 business?  
 19 A. No. He is a retired Ford dealer.  
 20 Q. Okay. Okay. So there came a time when he --  
 21 Mr. Abraham asked you to join as the broker of record  
 22 for Trend Setter?  
 23 A. Yes.  
 24 Q. Okay. When did that happen? Do you recall  
 25 when that -- about the time that had happened?

Page 44

1 A. I would say, probably, a month or two before,  
 2 beforehand.  
 3 Q. Before what?  
 4 A. Before we started it, a couple months  
 5 beforehand.  
 6 Q. Okay.  
 7 A. He said, "Would you be interested in doing  
 8 that?"  
 9 Q. Okay. So now he -- he testified that the  
 10 Trend Setter opened its doors around April 1st, 2005.  
 11 Is that your recollection?  
 12 A. No. I think it was March.  
 13 Q. March of '05?  
 14 A. (Witness nods head.)  
 15 Q. So when you say two to three months in  
 16 advance, you're probably looking at January '05,  
 17 December '04?  
 18 A. January '05.  
 19 Q. January '05?  
 20 Obviously, the reason you left RE/MAX Elite  
 21 was to take this position; correct?  
 22 A. Correct.  
 23 Q. Okay. So -- but were you looking to leave  
 24 RE/MAX Elite prior to having Mr. Abraham suggest this  
 25 business or were you -- were you satisfied there or --

Page 45

1 A. You know, I just -- you never know when a door  
 2 opens. So I can't tell you whether I would have left  
 3 there at that point and gone and taken my license home  
 4 because I had my broker's license or what I would have  
 5 done.  
 6 Q. Right.  
 7 Was Jim Keenan the broker of record when you  
 8 left? Do you remember?  
 9 A. I don't think so.  
 10 Q. Do you recall who the broker of record was?  
 11 A. K.C. Lamb.  
 12 Q. Okay. Now, you mentioned -- I think your  
 13 words were about Realty, Etc. that you didn't -- you  
 14 said it was "long closed down." What's your  
 15 understanding of -- of the status of Realty, Etc. at  
 16 this point?  
 17 A. My understanding is that it was opened a year  
 18 or so because if it was still in operation, he would not  
 19 have called me at the end of '99, first of 2000, to list  
 20 his foreclosure properties. I didn't even know he had  
 21 it going. We'd gone a time where we didn't talk, you  
 22 know, different directions and whatever.  
 23 Q. Right.  
 24 A. And so I didn't even -- I wasn't aware of  
 25 Realty, Etc. existing.

12 (Pages 42 to 45)



Page 90

1 that -- am I looking at it? Do you --  
 2 A. I don't know how you're -- I'm not sure I'm  
 3 understanding your question.  
 4 Q. Right. So -- well, I'm trying to get at this,  
 5 if you have 150 transactions that that's involving, even  
 6 if you assume that each transactions is by one sale --  
 7 an individual sales associate, only 150 agents are  
 8 involved out of 700 or so in a transaction in a  
 9 particular month; right?  
 10 A. If that's -- if that's a figure he gave you  
 11 because I'm not sure on the count.  
 12 Q. You're not sure on the count?  
 13 A. Huh-uh. I'm -- well, again, I'm not counting  
 14 the stuff I'm looking at. I'm just going through them  
 15 and making sure their paperwork's there.  
 16 Q. Right.  
 17 A. And passing it back for processing.  
 18 Q. Right. So let's, I mean, you've -- you said  
 19 you took two weeks off this month. Good for you.  
 20 And -- but let's say in the last six weeks, in terms of  
 21 the paperwork that you've reviewed, have there been any  
 22 names that you can recall that have come up, let's say,  
 23 more than once or --  
 24 A. I couldn't tell you.  
 25 Q. -- in terms of Trend Setter --

Page 91

1 A. I look through too many. I couldn't tell you.  
 2 Q. You -- there's not one that you've said, "Oh,  
 3 I've seen this name before and" -- or "This is the  
 4 fourth transaction in the last six weeks" or --  
 5 A. No. I -- I -- I couldn't tell you when an  
 6 agent did something and whether they had done it twice  
 7 or not or three times or four times. I'm just looking  
 8 at the contracts.  
 9 Q. Okay. The -- have you seen the -- the Ad-Mar  
 10 documents with -- with Realty, Etc. regarding the -- the  
 11 sign back from 1999?  
 12 A. No.  
 13 Q. Okay. Do you have an understanding, based on  
 14 your having been involved with --  
 15 A. In fact, I didn't even know he was doing it  
 16 back in '99.  
 17 Q. Okay. I was just --  
 18 A. I thought it was earlier than that, so I'm  
 19 just -- just for the record.  
 20 Q. Sure. Okay. So do you have an understanding  
 21 of not -- of whether or not an R/M is an abbreviation  
 22 for RE/MAX?  
 23 A. I haven't seen anything on -- Realty, Etc.,  
 24 you're talking about; right?  
 25 Q. Right.

Page 92

1 A. I haven't seen anything on that because I  
 2 wasn't involved in that.  
 3 Q. No. I understand, but based on your  
 4 experience having been involved with three RE/MAX  
 5 brokerages, is R/M an abbreviation for RE/MAX?  
 6 A. It could stand for -- it could stand for other  
 7 things, too. I can't -- you know, I don't -- it depends  
 8 on the context.  
 9 Q. Right. So if it's like R/M red and blue?  
 10 A. Again, I wasn't involved so I don't know what  
 11 you're referring to so, you know.  
 12 Q. I mean, what --  
 13 A. I don't want to make a commitment to something  
 14 I'm not privileged to or aware of.  
 15 Q. Right. In connection with your involvement  
 16 with the RE/MAX affiliates that you were involved in,  
 17 did you ever use the abbreviation R/M?  
 18 A. I've seen RM. I've seen R/M. I never used  
 19 R/M. It's not a term I used. I was under the  
 20 impression that it had to be spelled out.  
 21 Q. But you've seen the abbreviation R/M before in  
 22 connection with your work with RE/MAX?  
 23 A. I'm sure I may have. I don't -- I can't  
 24 commit to that because I can't tell you. I mean, I just  
 25 can't commit to it.

Page 93

1 Q. Did you have any involvement with the -- the  
 2 Trend Setter website?  
 3 A. Some.  
 4 Q. Okay. What was your involvement?  
 5 A. Some of the copy. Some of the copy on the --  
 6 I wrote the -- what we expect and the philosophy, that  
 7 kind of stuff. Boy, that was a long time ago, too.  
 8 Q. I'm going to hand you what's been marked as  
 9 Abraham 13. Is that something that you would have --  
 10 that you were involved in?  
 11 A. Yes.  
 12 Q. Why did you draft that?  
 13 A. Why did I draft that?  
 14 Q. Uh-huh.  
 15 A. Just to have something to present --  
 16 originally, to present to the agents about when they  
 17 came in to sign up, so we'd have something to work with  
 18 and he decided to put it on his website.  
 19 Q. Okay. Were you involved in any other portion  
 20 of the website?  
 21 A. Not a whole lot, just my opinion on things  
 22 every now and then.  
 23 Q. Okay. Anything specific that you can  
 24 remember?  
 25 A. Not really.

24 (Pages 90 to 93)

Page 98

1 A. I don't have any input on that. That  
2 pre-existed. He had that before me. He decided to use  
3 it. I am just the broker of record. I'm not involved  
4 in that. I didn't get involved in the design or -- I  
5 just stepped in as broker of record.  
6 Q. Okay. Now, there's an independent contractor  
7 agreement that you signed while you were at Elite,  
8 RE/MAX Elite; correct?  
9 A. Yes.  
10 Q. We marked that as -- I'm going to hand you  
11 what's been marked as Abraham 19. Is this your  
12 independent contractor agreement with RE/MAX Elite?  
13 A. Well, I will say that that's my signature on  
14 the last page, but -- I'm thinking that is, but I --  
15 it's a copy. It's not the original, so I don't know.  
16 I'm assuming it is.  
17 Q. Okay. So that's your signature on the -- I  
18 guess we can go off the top. That's page -- that says  
19 Page 10 on the upper right side on the fax page?  
20 A. Uh-huh.  
21 Q. And then I think underneath, it has a dash 9  
22 dash?  
23 A. Right.  
24 Q. Do you see that?  
25 A. Uh-huh.

Page 99

1 Q. That's your signature there?  
2 A. Yes.  
3 Q. And then on the previous page, is that your  
4 signature there as well?  
5 A. Yes, it is.  
6 Q. Do you recall signing it?  
7 A. Yes, I do.  
8 Q. Okay. And do you recall -- in the individual  
9 guaranty portion down below, is that your signature as  
10 well?  
11 A. Yes, it is.  
12 Q. Now, I think you testified a little bit  
13 earlier that you did -- you were not provided a copy of  
14 this agreement; is that correct?  
15 A. No. I've really never seen a copy of this  
16 thing before, other than when I signed it.  
17 Q. Right. So you signed it. Did you -- was  
18 there a copy not purposely given to you? It was just  
19 a -- a situation where you didn't request it and they  
20 didn't provide you a copy?  
21 A. Basically.  
22 Q. Okay. Now, have you had an opportunity to  
23 review the agreement recently?  
24 A. I really haven't looked it over that much.  
25 Q. Is it your understanding that this agreement

Page 100

1 prevents you from using the RE/MAX trademarks?  
2 A. I don't use the RE/MAX trademarks.  
3 Q. Pardon?  
4 A. I don't use the RE/MAX trademarks.  
5 Q. That's not my question. My question is, does  
6 the agreement -- is it your understanding that the  
7 agreement says that you cannot use the RE/MAX  
8 trademarks?  
9 A. Yes.  
10 Q. All right. I want to go to a specific  
11 provision in the contract. And I believe it is -- I  
12 want to direct your attention to Paragraph 12-B.  
13 A. Okay.  
14 Q. And there's a -- a sentence that is -- starts  
15 on the one, two, three, four, fifth, sixth line down, it  
16 starts out, "Contractor."  
17 A. Okay.  
18 Q. Okay? And so do you understand that you --  
19 that you are the contractor? You're considered the  
20 contractor as --  
21 A. Okay.  
22 Q. Is that your understanding?  
23 A. Okay. Yes.  
24 Q. All right. So it says, "Contractor  
25 acknowledges our Regional's and International's

Page 101

1 exclusive right to use its real estate systems, its  
2 method of operation and its distinguishing  
3 characteristics, including but not limited to service  
4 marks, trademarks, trade names, copyrights,  
5 certification marks, designs, slogans, logos, telephone  
6 numbers, business cards, lawn signs, color combinations  
7 and style names or other advertising copy now or  
8 hereafter displayed, used or becoming part of the RE/MAX  
9 business." Do you see that?  
10 A. Uh-huh.  
11 Q. Okay. So would you agree with me that the --  
12 that the orientation of red, white and blue as it's  
13 shown on the RE/MAX sign is a color style?  
14 A. No.  
15 Q. It's not a color combination?  
16 A. It may be a color combination, but I don't  
17 know where it says red, white and blue here.  
18 Q. But it says color combination; does it not?  
19 A. Well, so is the United States flag, red, white  
20 and blue.  
21 Q. Does the United States flag have three bars?  
22 A. You just said color combination. You did not  
23 say shapes.  
24 Q. I'm asking you a question. Does the American  
25 flag have three bars?

26 (Pages 98 to 101)